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Supreme Court of the United States

SUPPLEMENTAL MEMORANDUM FOR RESPONDENT
MANUEL ARISTEGUIETA

Supreme Court of the United States

OCTOBER TERM, 1962

No. 958

MARCOS PEREZ JIMENEZ, *Petitioner*,

v.

GUY W. HIXON, United States Marshal, Southern District of Florida,
and
MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, Miami, Florida, *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR RESPONDENT MANUEL ARISTEGUIETA

Petitioner asserts for the first time in his reply memorandum that "time and again" he alleged before the extradition judge that the funds he is accused of embezzling "were used for political purposes," and that he was "precluded from offering any testimony or proof thereof." (Reply Mem., p. 10).

The statement is so unfounded that it is easy to understand why the point was not urged upon the District Court or the Court of Appeals or made in the petition in this Court.

Petitioner cites pages 3138-50 of the Transcript of Record. At these pages there is recorded a colloquy that followed an objection by counsel for this respondent to a question put by counsel for the petitioner to one of petitioner's witnesses, Dario Parra, a former Venezuelan government official. The witness had been testifying about alleged subversive activities during the time petitioner was in office, in line with petitioner's contention that the murders with which he was charged were connected with political offenses because they were associated with such activities. (Tr. 3109-37). The witness then testified that such subversive activities were especially marked during two periods when there were elections. The latter of the two periods was stated to be November 1957-January 1958; a plebiscite was held in December 1957 and the "Government was overthrown" in January 1958. (Tr. 3138). Then the following question was put to the witness:

> "What parties participated in this activity with reference to the second period that you mentioned?" (*Ibid.*)

At this point counsel for this respondent objected on the ground that alleged subversive activities in the period November 1957-January 1958 were too remote from the time of the murders, the last of which occurred in 1954. (*Ibid.*) Thereupon counsel for the petitioner suggested *for the first and only time* that he desired to elicit testimony that there was a practice, at a time of electoral campaigns, of seeking contributions from government contractors "on behalf of the Government party in power," the Government party being "called F.E.I.," and that this might have some bearing on the alleged embezzlements. (Tr. 3140-41). Counsel for this respondent pointed out that the pending question related to alleged subversive

activities during the November 1957-January 1958 period, which could have nothing to do with the petitioner's embezzlements long prior thereto. (Tr. 3140, 3143). The petitioner's counsel never showed any connection, and the judge sustained the objection to the pending question. (Tr. 3150). Petitioner's counsel dropped the point, and it has never re-emerged until the petitioner's reply memorandum in this Court.

It is apparent that the pending question was utterly irrelevant. As a matter of fact the same witness testified that the F.E.I.—the Government political party referred to by counsel for the petitioner—existed only from late 1951 to mid-1953. (Tr. 3169). Obviously subversive activities—or any activities—more than four years later could have nothing to do with the financing of that party.

It is not difficult to see why the petitioner's counsel dropped the point. He had stated that the question to the witness Parra was to "begin to lay the groundwork" for the evidence of prospective deponents in Europe, and he particularly named General Llovera Paez. (Tr. 3148). But Llovera Paez's affidavit, designed to show in detail and as strongly "as the truth permits" (Tr. 2761-62) what his testimony would be, was received in evidence by stipulation of this respondent (Tr. 4211-12), a course welcomed by the petitioner (Tr. 3400-01; see Tr. 3414-18), and it contained nothing whatsoever remotely bearing on counsel's suggestion as to how the Government party was financed or on any political use of the embezzled funds.[1] Nor did any of the other affidavits from persons in Europe that the petitioner had tendered.

Thus there is not a shadow of merit in this most belated claim that the petitioner was precluded from showing that

[1] General Llovera Paez's affidavit deals mainly with matters pertinent to the murders. (Tr. 4106-17). The portion dealing with financial matters is a mere denial of any financial wrongdoing. (Tr. 4117-18).

the funds from his embezzlements were used for political purposes or that he ever so alleged, much less "time and again."[2]

Respectfully submitted,

HOWARD C. WESTWOOD
WILLIAM H. ALLEN
WILLIAM A. DOBROVIR
W. L. CRAIG
701 Union Trust Building
Washington 5, D. C.

WILLIAM G. WARD
1240 duPont Building
Miami 32, Florida

Attorneys for Respondent
Manuel Aristeguieta

COVINGTON & BURLING
WARD & WARD
Of Counsel

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[2] The emptiness of petitioner's claim is further emphasized by his reliance on the "investigation" made by Judge Grooms, sitting as extradition judge in In re Mylonas, 187 F. Supp. 716 (N.D. Ala. 1960). (Reply Mem., p. 10). There Judge Grooms, after noting the political disruption prevailing in Greece at the relevant periods, and testimony that the alleged embezzlements were only "a breach of formality as a result of a political impasse," 187 F. Supp. at 719, n. 7, found on the facts that they constituted the use by the defendant of funds of a local governmental unit "for other and perhaps more urgent projects" than the projects for which they had been authorized, and that governmental authorities had actually "subsequently approved the expenditures." *Id.* at 720. Hence, of course, the wrong, if any, was of a purely political character. But in the petitioner's case all of the tribunals have found that the embezzlements were for the petitioner's own enrichment.